

Testimony before the United States Congress on behalf of the



Testimony of

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before a joint hearing of

The House Government Reform Committee
Subcommittee on Energy Policy, Natural Resources, and Regulatory
Affairs

and

The House Small Business Committee
Subcommittee on Regulatory Reform and Oversight

on the date of

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on the subject of

Small Business Paperwork Burdens and Relief

Chairman Ose, Chairman Schrock, and members of the Government Reform and Small Business Committees:

On behalf of the 600,000 small-business owners represented by the National Federation of Independent Business, I would like to thank you for the opportunity to appear before you to discuss the paperwork burden imposed by the federal government on our members, and small businesses in general.

NFIB represents small employers who typically have about five employees and report gross sales of around \$350,000 per year. Our average member nets \$40,000 to \$50,000 annually. As I have testified before, we believe it is important to distinguish the type and size of businesses NFIB represents. Too often, federal policy makers view the business community as a monolithic enterprise that is capable of passing taxes and regulatory costs onto consumers, without suffering negative consequences. For small business, this is not the case. NFIB members are not publicly traded corporations; they are independently owned and operated. They do not have payroll departments, tax departments or attorneys on staff.

Being a small business owner means, more times than not, you are responsible for everything (ordering inventory, hiring employees, and dealing with the mandates imposed upon your business by the federal, state and local governments). That is why simple government regulations, particularly when it comes to the paperwork they generate, are so important. The less time our members spend with “government overhead,” the more they can spend growing their business and employing more people.

As I have said before, unreasonable government regulation, especially onerous paperwork burdens, continues to be a top concern for small businesses. Regulatory costs per employee are highest for small firms, and our members consistently rank those costs as one of the most important issues that NFIB ought to work to change. A report commissioned by the Small Business Administration’s Office of Advocacy estimates that the regulatory compliance costs for firms with fewer than 20 employees is nearly \$7,000 per employee, per year.¹

This means that for one of NFIB’s average members, with five employees, those costs total approximately \$35,000. For a business operating on a shoestring, such costs can be devastating.

Today, I would like to discuss a recent survey conducted by NFIB’s Research Foundation regarding Paperwork and Recordkeeping, a survey which is attached as an appendix to this testimony. The NFIB Research Foundation is a non-profit 501(c)(3) organization,

¹ Report for the SBA Office of Advocacy, *The Impact of Regulatory Costs on Small Firms*, Crain and Hopkins, 2001 (<http://www.sba.gov/advo/research/rs207tot.pdf>)

and its research into small business economic trends and issues is highly regarded in the academic community. Their conclusion, and the overall theme of this testimony is that the best thing for small businesses is *simplicity*—simplicity in instructions, simplicity in requirements, and an overall reduction in the size of the paperwork and the time necessary to complete forms.

The focus of our efforts has been on simplification—small businesses have a hard time dealing with complex paperwork requirements. They need to know precisely what is required of them, and would like as short and as clear a form as possible. This sentiment was recently confirmed by the NFIB Research Foundation's recent poll of small businesses on paperwork (discussed in detail below), as well as our sampling survey of NFIB members who might be faced with reporting requirements under the Toxics Release Inventory (TRI, also discussed below).

Measuring the Burden: The NFIB Research Foundation's Recent Polling on Paperwork Costs

The NFIB Research Foundation concluded overall that the cost of paperwork averages roughly \$50 per hour. In addition, the following conclusions were reached²:

1. The individual(s) completing and maintaining paperwork and records in a small business is dependent on the subject matter of the paperwork and the size of the firm. Owners most frequently handle paperwork and record-keeping related to licenses and permits (55% of firms), purchases (46%), and clients/customers (46%). They least frequently deal with financial (27%) and tax (12%) records. Three of four have someone (another firm) outside handle their tax paperwork. Paid employees customarily do most of the paperwork and record-keeping in about 25 – 30 percent of firms. Employees are much more likely to do so in larger, small businesses than in the smallest ones regardless of subject matter (except tax). Unpaid family members do the paperwork in less than 10 percent of cases. (And, as is discussed below, in the case of TRI reporting, owners do it more often themselves, or use consultants).
2. The cost of paperwork also varies by subject matter and firm size. The more paperwork and record-keeping that must be sent outside, the more expensive the paperwork and record-keeping. Owners of larger small firms pay higher average prices per hour because they are more likely to send their paperwork to outside professionals and because the value of their time on average is higher. (This confirms the findings of the informal survey above).
3. The estimated average per hour cost of paperwork and record-keeping for small businesses is \$48.72. By subject matter the average per hour cost is: \$74.24 for tax-related, \$62.16 for financial, \$47.96 for licenses and permits, \$43.50 for government information requests, \$42.95 for customers/clients, \$40.75 for

² NFIB Research Foundation National Small Business Poll, Vol. 3, Issue 5, *Paperwork and Recordkeeping*, 12-03, http://www.nfib.com/PDFs/sbpoll/sbpoll12_2003.pdf

- personnel, \$39.27 for purchases, and \$36.20 for maintenance (buildings, machines, or vehicles).
4. The typical small business employs a blend of electronic and paper record-keeping. Less than 10 percent use paper exclusively and a handful use only electronic means. The type of record most frequently completed and maintained on paper is licenses and permits.
 5. No single difficulty creates the government paperwork problem. The most frequently cited problem is unclear and/or confusing instructions (29%). The second most frequently cited difficulty is the volume of paperwork (24%). Duplicate information requests (11%) place third, followed by maintenance of records that ordinarily would not be kept (10%) and requests for inaccessible or non-existent information (9%). Twenty (20) percent could not decide.

Computerization has had a positive impact on the paperwork burden of small business owners and will continue to do so. Unfortunately, technology alone cannot alleviate the paperwork. More than filing information request (demand) forms and storing copies, paperwork requirements involve understanding the information needed and the form in which it is required, acquiring the necessary information and organizing it in a useful way, determining what to keep and for how long, etc. And, then there is the cost. Even with the most efficient computer equipment, documentation is not cheap. People must organize and input the necessary data, and people are expensive.

However, I do believe that the Business Compliance One-Stop program undertaken by the Small Business Administration is a good step towards alleviating the problem using computers. That program, also known as BCOS, would allow small-business owners to input simple data regarding their businesses, and they would immediately receive all of the information necessary to fulfill their regulatory burdens. It is an ambitious program, but one that ought to be supported fully by Congress.

As to the issue of paperwork costs associated with tax preparation, it has been recognized by both Chairmen in the past that the requirements levied by the Internal Revenue Service represent a significant portion of the burden faced by small businesses. Currently, the IRS has no mandate to reduce paperwork burdens, as there exists a Memorandum of Understanding between IRS and the OMB regarding the application of SBREFA to the tax collecting agency. The Department of the Treasury hasn't designated a single point of contact on paperwork, nor has it completed the required reporting on enforcement of paperwork reduction laws.

In order to take a significant bite at the paperwork apple, some oversight must be made regarding the burdens levied by the IRS. The MOU ought to be examined, and there ought to be a reconsideration of the current policy agreements between OMB and the IRS. Tax paperwork costs nearly \$75 per hour and small businesses can ill-afford to have such resources siphoned off. Some consideration should be given to new legislation

aimed at holding the IRS accountable to paperwork reduction laws already applying to other agencies.

A Specific Paperwork Example: Lead TRI

The paperwork associated with the TRI for lead and lead compounds illustrates the frustration small-business owners face with overly complicated and burdensome paperwork. NFIB initially cautioned EPA on their bringing the reporting threshold down from 10,000 pounds to 100 pounds, as we believed it to be wholly unnecessary, overly burdensome, and not conducive to bringing to EPA (and the public) the data necessary for a complete inventory of toxics releases. It was the execution of the lead TRI initiative itself which was problematic: EPA underestimated the burden imposed by the new paperwork; they created guidance documents which were confusing and unhelpful; and several of their suggestions on burden reduction would have, in fact, increased burdens.

The Burden of the Rule

In comments NFIB filed with the Office of Information and Regulatory Affairs, we said:

We believe [the regulations governing filing for lead under TRI] to be in violation of agency guidances enacted under the auspices of the 1996 Small Business Regulatory Enforcement Fairness Act. Specifically, that the EPA came to faulty conclusions in its findings that the new standards would not have a significant economic impact on a substantial number of small entities (SEISNSE). Because of the onerous burdens being placed on small businesses, we have requested that the EPA defer implementing this rule for one year. However, the EPA continues to press forward with the implementation of this requirement... In the end, NFIB believes it has been demonstrated that had the EPA used the analytic approach followed by the GAO when that agency reviewed this rule, using the discretion allowed under the Regulatory Flexibility Act, EPA could have chosen not to certify it.³

The Guidance Documents

NFIB has also repeatedly asked in meetings with EPA senior staff for an overhaul of the guidance documents associated with reporting for lead. The guidance documents are needlessly confusing, and must be simplified in order for small entities to be certain what their requirements are. We have suggested a detailed index at the beginning of the document, pointing filers to the appropriate sections in order to give them the precise instructions necessary to properly complete the forms. Also, a “frequently asked questions” or FAQ section would be helpful.

³ Comments of NFIB to OMB Office of Information and Regulatory Affairs, Draft Report to Congress on Costs and Benefits of Regulation, 05-23-03, p.3

Burden Reduction Solutions Offered By EPA

In September 2003, the NFIB Legal Foundation commented specifically on issues related to TRI Form R and burden reduction, saying the following:

We urge EPA to carefully consider concerns raised by small-business stakeholders regarding the reporting burden of Form R. Although EPA claims modifications to Form R will make the reporting task easier for small businesses, serious flaws exist in the current burden reduction proposals...EPA proposes changes to the TRI Form R to allegedly simplify its current structure. Of the 67 “changes” to Section II of Form R, 59 concern previously collected data elements that have been merely rearranged, four new elements represent a subset of a single previous data element, and four elements are simply new sums of previous elements with no additional burden estimated for the need to read the instructions. Although EPA acknowledges that modifications to Form R may prompt some increase in unit reporting burden as facilities become familiar with the new reporting format, it claims the increase should be offset because the modifications are related to presentation of data that has already been compiled by the reporting facility.⁴

The Legal Foundation went on to say:

EPA's proposed changes to the format of Form R do not afford small businesses a genuine burden reduction. The proposed changes would increase the length of the form and require more detailed breakdowns of quantitative data. Facilities would need additional time to read the new instructions and perform more detailed breakdowns of various quantities. This is valuable time that small-business owners must spend away from the operation of their businesses. EPA does not factor into burden reduction calculations the time required for annual training necessary to comply with new formatting changes.⁵

Similarly, allied organizations have also been vocal about their concerns with the burden imposed by the TRI. In comments to the EPA in September, IPC—The Association Connecting Electronics Industries, said that the agency had failed to: “Substantiate its claim that the TRI reporting burden has been significantly reduced,”⁶ and that:

- EPA relied on inadequate and inappropriate survey data to support its contention that the TRI Form R burden is lower than previously estimated.
- EPA’s burden estimates fail to account for the substantial increase in TRI burden related to the requirements for reporting lead and other PBT chemicals.
- EPA’s burden estimates do not reflect the difficulty of complying with an increasingly complex TRI program. EPA’s frequent regulatory and

⁴ Comments of NFIB Legal Foundation to EPA, 09-02-03, p.2

⁵ Id. at 3

⁶ Comments of IPC to EPA, 09-02-03, p.1

interpretive changes often result in an increase in burden imposed on the reporting community. Each year repeat filers must conduct familiarization and training needed to comply with new directions, interpretations and guidance, as well as adjust their compliance determination and Form R calculations to conform to the new requirements. Many of these changes are de-facto rulemaking that is conducted without public input or an analysis of the economic impact and cost-benefit.⁷

Furthermore, IPC said that EPA had failed to, “Fulfill its commitments under the Paperwork Reduction Act (PRA) to reduce reporting burdens, especially as they pertain to small businesses.”⁸

The Office of Advocacy at the Small Business Administration (hereafter “Advocacy”) has also been vocal in their concern about TRI impacts:

During the prior ICR review, EPA did not adequately address the issue of raising the total reportable amount threshold from 500 to 5,000 pounds (alternatively to 1,000 or 2,000 pounds) or the alternate threshold from 1 million to 10 million pounds. The agency stated that any expansion of the Form A eligibility could be inconsistent with the legal requirement that any revised reporting scheme must address the “substantial majority” of releases subject to the original reporting requirements. The agency appears to have overlooked the EPA’s 1994 legal interpretation that certifications in Form A automatically ensure that the substantial majority requirement is being met, because the certification itself provides the information through range reporting (also allowed in Form R itself)... Advocacy believes EPA can meet the “substantial majority” requirement through any certification statement, as long as it retains a certification requirement which serves as a form of range reporting.”⁹

Clearly, serious concerns have been voiced in the past regarding what ought to be done to reduce the TRI reporting burden.

Reduced Burden Estimates, But No Real Burden Reduction

NFIB believes that EPA has consistently underestimated the burden associated with completion of paperwork under TRI. The data EPA has relied upon is extremely limited and non-representative, and thus drastically reduces the estimated burden of completing TRI documentation. EPA then relies upon faulty methodology and flawed assumptions to justify the burden reduction.

⁷ Id.

⁸ Id.

⁹ Letter to Kimberly Nelson from Tom Sullivan, 09-02-03,
http://www.sba.gov/advo/laws/comments/epa03_0902.html

For instance, the EPA has done a number of surveys of the burdens associated with filing under TRI, but the conclusions of those surveys have been neither analyzed nor validated. In its “Estimates of Burden Hours for Economic Analyses of the Toxic Release Inventory” (Burden Analysis),¹⁰ EPA states that:

The existing burden estimates for subsequent year compliance determination, Form R calculations and form completion, and recordkeeping/mailing are above the 95th percentile of per form burden reported by actual TRI respondents.

There are serious problems with the validity of this statement. EPA’s own documents state that sample size is inadequate and that concerns exist regarding the data’s potential to “not accurately represent the universe of reporting facilities.” EPA has neglected to perform even basic statistical analysis of the sample such as measures of variability, confidence level, and sample size adjustments.

Furthermore, many of the underlying assumptions regarding business are invalid:

Staff Turnover Burden Assumptions

EPA’s burden estimates do not address the fact that staff turnover, experienced by all businesses (especially small businesses), and government agencies such as EPA, requires new employees to become familiar with TRI requirements, even when there are no new regulations. EPA’s response to comments for the previous ICR¹¹ implies that companies have caused this problem by assigning TRI work to “newer, less experienced staff with lower wages.” EPA implies that no turnover occurs among experienced, more highly paid staff, a clearly erroneous assumption.

Assumptions Regarding Better Information Leading to Reduced Burden

In the burden analysis,¹² EPA inappropriately assumes a reduction in compliance burden has occurred due to “changes in the availability of information to facility staff.” In actuality, the increased availability of information has increased the reporting burden as staff must review the additional information and perform additional calculations in order to comply with the stationary requirement to use available information.

EPA goes on to state, “These sources include information on product composition and impurities from suppliers...” This explanation is also flawed, as it fails to account for the unavailability of information regarding de-minimis concentrations of PBTs for which reporting is required, but supplier notification is not required.

¹⁰Estimates of Burden Hours for Economic Analyses of The Toxics Release Inventory Program, Cody Rice, Analytical Support Branch, Environmental Analysis Division, Office of Environmental Information, US EPA, 09-10-02 (Rice Estimates)

¹¹ Response to Comments Received on the Request for Comment on Renewal Information Collection for Toxic Chemical Release Reporting for the Form R (EPA ICR No. 1363.12, OMB No. 2070-0093, 67 FR 44213) and the Form A Certification Statement (EPA ICR No. 1704.06, OMB No. 2070-0143, 67 FR 44197)

¹² Rice Estimates

EPA also cites "...improved and detailed guidance from EPA and trade associations" as an explanation for decreased reporting burdens. As a matter of fact, EPA has published a significant number of rather lengthy guidance documents. For example, the compliance guide for lead reporting is over 200 pages. The 1998 Questions and Answers document, which is referenced in the lead compliance guide, is over 300 pages. Not to mention over a dozen other chemical specific guides and another dozen industry specific guides. The time required to read these guides in order to responsibly complete TRI forms results in significant additional burdens.

EPA further cites, "emissions factors provided by EPA" as contributing to decreased reporting burden. In fact, these emissions factors are extremely limited. Emissions factors presented in the lead compliance guide are mostly air emissions from AP-42. Most industry sectors have not been provided emissions factors of any type.

Flawed Extrapolation of Reporting Patterns

EPA has incorrectly assumed that the current reporting pattern will be replicated in future reporting years. EPA states, "...for the 2000 reporting year, over 60 percent of Form Rs reported releases to a single medium," as a justification for lowering reporting burden estimates based on multi-media reporting. In fact, the promulgation of lowered reporting thresholds for PBTs will require all releases, however minute or de-minimis, to be reported. Thus many more facilities are likely to report small amounts of PBT materials in several different media that were previously not required to be reported. In this changing reporting climate, it would be unwise for EPA to extrapolate single media reporting which occurred under a far different set of regulatory requirements.

Overestimated Benefit of TRI-ME

EPA has also overestimated the value of TRI-ME software. EPA asserts a 25% reduction in burden due to the use of TRI-ME.¹³ This extraordinary savings is based on data collected from a, "small sample of facilities that used TRI-ME for the 2000 reporting year as part of a pilot process." It is unclear what statistically valid methodology EPA used to extrapolate this small sample to the entire TRI Universe. In EPA's recent stakeholder dialog on TRI, less than 1/3 of those commenting on TRI-ME found it to be helpful or easy to use. Of those that supported TRI-Me, 75% felt improvements were needed.

Reliance on API Filings in Estimating Burden Reduction

It has come to our attention that the EPA is relying on filings by the American Petroleum Institute (API) in estimating reduced burdens for filers. This is an inherently flawed

¹³ Toxic Chemical Release Inventory, Toxic Chemical Release Reporting, Information Collection Request Supporting Statement, OMB Control Number 2070-0093 EPA ICR#1363.06-13-03, pg. 84.

approach. There are very few small entities contained within the API's membership, and small entities (as we will discuss below) are inherently different. This was borne out by recent research conducted by Drs. Crain and Hopkins on behalf of Advocacy. In their research, they discovered that regulatory compliance costs are highest for small firms, especially those under 20 employees. In those instances, costs jump up by at least a third.¹⁴

Small firms do not have the professional expertise that large firms like those represented by API are able to hire, and they similarly have difficulty hiring outside consultants to assist them in preparation. It is because of these and other reasons that we believe it is faulty to use API's information to determine burden reduction, especially when it comes to small firms.

NFIB's Survey of TRI Participants Among NFIB Members

Because quality data on the actual impact of the TRI program on small businesses is hard to come by, NFIB, the NFIB Legal Foundation and the NFIB Research Foundation conducted an informal survey of our membership. A survey on TRI paperwork was sent to small businesses across industry sectors (including manufacturing, retail, and construction), asking them about their familiarity with the TRI program, the number of chemicals they report on, who fills out the paperwork, and the time and costs involved.

Our survey generally confirmed the conclusions of our small business paperwork impact poll, discussed above. Consistent in the responses of our members was a concern over the complexity of the regulations—our members want to do the right thing, but find themselves hamstrung by having to spend time and energy figuring out just what it is that the government wants.

There were about 50 useable responses to the five-question Research Foundation survey. Respondents were limited to firms with 10 or more employees.

Highlights:

1. One quarter of respondents reported that complying with TRI regulations cost more than \$1000 per year. Frequently the paperwork was filled out by consultants charging between \$100 and \$250 per hour, and required more than 80 hours to complete. (The range of costs in this group varied from \$1,000 to over \$20,000). For a small firm with few profits, this is an excessive burden.
2. The number of chemicals being reported under TRI for the "high cost" group was surprisingly small, generally fewer than 5 separate chemicals being reported on for each filer. These chemicals included ammonia compounds, styrene, nickel, methylene chloride, nitrates, dioxin, chromium and sodium hydroxide.

¹⁴ Crain and Hopkins, *Impact of Regulatory Costs on Small Business*,
<http://www.sba.gov/advo/research/rs207tot.pdf>

3. Who fills out TRI paperwork? From our informal survey:

Business owners: 38 percent of the time--time valued at about \$50/hour
An employee: 23 percent of the time--time valued at \$30/hr-\$40/hr
Consultants: 17 percent of the time--time valued at \$100/hr to \$250/hr

4. Compared to the nationally-representative NFIB Paperwork and Record-keeping Poll described above, due to the complexity of the TRI requirements, more business owners themselves (as opposed to employees of the business) fill out TRI paperwork than is generally the case with government paperwork. This means that a) TRI paperwork is more of a financial burden to those responding than other regulations, and b) TRI rules are more likely to take business owners away from their businesses than other regulations. Clearly simplification is necessary.

5. The distribution of the respondents was bi-modal. That is, the most expensive compliance costs frequently involved only one or two chemicals or metals—as the situation is with many small businesses. It would clearly be in the best interests of these small entities and the EPA to investigate the practices used (via focus groups) to expand the cost saving techniques practiced by owners who comply at lower costs.

6. Perhaps the most interesting response from the informal survey was from the business owner who reported that he did not have to comply with TRI filing, but he had to spend “17-40 hours to make sure.” Clearly, the EPA needs to use better and more succinct executive summaries in the guidance documents to enable business owners to ascertain relatively quickly whether compliance is in fact required. All of this searching process (at about \$50 per hour) is another added cost of perhaps \$1000 (20 hours at \$50 per hour) to a small business owner.

Specific Recommendations on TRI Burden Reduction

Over the course of its involvement with the TRI Issue, NFIB had made recommendations on how EPA could best minimize the impact of the TRI paperwork burden on small business while still preserving its ability to offer information on chemicals within communities. Though one single recommendation might be best, unfortunately a “one-size fits all” approach will not work here. Therefore, we offer three different approaches for you to consider, hopefully together. Again, the operative theme here is simplicity: the reduction of time and effort necessary to present accurate and helpful data in order to comply with the regulations.

Certification for No Significant Change (Form NS)

The first, and simplest, option is to allow TRI reporters to file a certification of No Substantial Revision (Form NS) from a baseline Form R filing. This option would be open to both PBT and non-PBT reporters who qualify.

In its September letter, Advocacy estimated “that the Form NS would provide burden relief for at least 50% of all reports in a given year, without any significant diminution of the right-to-know information, versus 26% of non-PBT reports currently eligible for Form A reporting.” They went on to say the following:

Even expanding the Form A eligibility threshold to 5000 pounds of reportable waste would only offer relief to 40% of non-PBT reporters. This option would provide relief to a wide range of PBT and non-PBT reporters over and above the relief provided by Form A since use of Form NS would relieve reporters from reportable amount calculations (addition of Form R Sections 8.1 through 8.7) required for Form A.¹⁵

Under this scenario, a facility filing a Form R in the initial year would then file a Form NS for the following four years. In year five, the facility would once again be required to file Form R to re-establish the proper baseline. Advocacy anticipated that EPA would “utilize the baseline Form R as the placeholder for the Form NS in the TRI database until the next Form R is provided by the facility, so that the TRI data is preserved each year the Form NS is filed, with an indicator that the Form NS was filed in that reporting year, preserving the full right-to-know data for the public.”¹⁶

This form could be used by any facility that does not modify its annual production by more than 10%, as well as not change any processes at the facility. For these facilities, the baseline Form R would be adequately representative of all the activities that would otherwise be reported on subsequent filings.

We believe, though, that a 10% change might be inappropriate for very small releases. Therefore, Form NS ought to also be used by any facility for which the total onsite releases (Form R Section 8.1 plus 8.8) are less than 100 pounds for non-PBT chemicals and 10 pounds for PBT chemicals (except dioxins) in both the base year and the new reporting year. This could also be limited to facilities that do not change any processes at the facility.

Overall, this approach garners significant burden reductions for small entities, and because small businesses face higher reporting costs per form than large firms, the use of the simple Form NS approach would allow each small firm to save more proportionally than large firms. Furthermore, since this option is designed to produce small business burden relief while preserving the integrity of important information, as Advocacy stated, “Form NS would not apply to the largest releases: onsite releases (Form R Sections 8.1 and 8.8) over 10,000 pounds annually. A 10% change in production for a large quantity releaser could be a significant change to the local community.”¹⁷

¹⁵ Sullivan Letter

¹⁶ Id.

¹⁷ Id.

De-Minimis Exemptions

One concern among our allies is that a number of firms that employ legal expertise in-house might not feel comfortable with a Form NS. Therefore, there ought to be options that would minimize their burdens as well, beyond Form NS. Restoration of De-Minimis exemptions or exclusions would satisfy the reduction in burden, while satisfying legal concerns as well.

When talking about “Relief for Zero Reporters”, Advocacy said the following:

The rationale for removing the reporting requirement is that reports of zero releases provide no practical utility to data users. If data from this class of reporters is desired for purposes other than community right-to-know, a separate data collection request should be submitted to OMB for clearance....A good illustration of the severe justification for burden relief is the situation faced by the petroleum wholesalers in the 2001 reports. One major petroleum firm with 35 terminals filed 213 Form Rs, with 78 zero release reports (37% of the total), including 16 zero lead release reports. These were not simply zero releases onsite, but represented zero releases and zero total wastes.¹⁸

Expansion of Form A Use

The alternate threshold certification, otherwise known as Form A, is a significant burden reduction option of the TRI program. Unfortunately, EPA has in recent years, significantly decreased the proportion of facilities eligible for this lower burden form of reporting. EPA claims that it would be unable to meet the requirement of EPCRA were it to increase the applicability threshold for Form A, and cited Section 313(f) (2) which states that EPA may revise thresholds only to the extent that the revised threshold obtains reporting on a substantial majority of total releases of the chemical at all facilities subject to EPCRA Section 313. To substantiate this claim, EPA referred to their response to OMB’s January 18, 2001 Terms of Clearance notice for the ICR renewal of Form A.¹⁹

But we (and others) believe that EPA has misinterpreted its requirements under the Pollution Prevention Act (PPA).²⁰ In their response to comments for the previous ICR²¹, EPA stated that Section 6607 of the PPA requires reporting of “the amount of the chemical from the facility which is recycled and the process of recycling used.” Therefore, EPA concludes that quantities of toxic chemicals recycled by a facility must be included in TRI reporting. EPA does not, however, explain why materials reported

¹⁸ Id.

¹⁹ EPA 1704.06, OMB 2070-01143.

²⁰ 42 USC 11071 to 11079.

²¹ Response to Comments Received on the Request for Comment on Renewal Information Collection for Toxic Chemical Release Reporting for the Form R (EPA ICR No. 1363.12, OMB No. 2070-0093, 67 FR 44213) and the Form A Certification Statement (EPA ICR No. 1704.06, OMB No. 2070-0143, 67 FR 44197)

under the PPA must be included in TRI threshold determinations. There is nothing in either EPCRA or the PPA that requires materials sent off-site for recycling to be included in TRI threshold determinations. Rather, EPA has misused quantities of *recycled* materials included on TRI reports, as per the PPA, to bolster its claims that raising the Form A thresholds would make EPA unable to meet its statutory requirements under EPCRA to capture the substantial majority of *releases*. EPA's supporting analysis exacerbates this error by lumping recycled materials in the general category of "releases." EPA's circular logic should not be permitted as a justification for not raising the Form A thresholds, nor should it be considered justification for not excluding recycled materials from TRI threshold determinations.

Advocacy had the following to say about expansion of Form A:

By implementing the Enhanced Form A alongside an upward revision of the eligibility thresholds, EPA can accomplish significant burden reduction while increasing data quality over the Form A approach. Advocacy recommends that the Enhanced Form A be available for reporters of PBT chemicals with fewer than 50 pounds of total wastes. We describe below two alternative methods for establishing eligibility for the Enhanced Form A (based on either the current reportable amount, or total onsite release).

The Enhanced Form A has the benefit of carrying burden reduction while substantially preserving the information currently reported by small reporters on Form R. The Enhanced Form A would preserve the practical utility of all reported data by allowing right-to-know users to easily assess the size of releases and waste activities without placing further undue burden on reporters that release insignificant amounts of chemical waste. Reporters would simply check the appropriate range box for each category of on- and offsite releases and each recycling, energy recovery, or transfer activity undertaken. Because those reports that qualify capture by definition small releases, the ranges provide sufficient information for data users. Furthermore, as noted above, range reporting is allowed on Form Rs under appropriate circumstances, thus range reporting in and of itself is not an impairment to data quality.²²

Clearly, all three approaches have merit and ought to be considered.

Conclusion

The broad distribution across various possible answers to our poll suggests that there is no single paperwork problem. There are many problems and that implies the need for many solutions. The result is that paperwork and record-keeping continue to represent a major aggravation for small-business owners. But it is also a place where they can use sweat equity to save cash. When asked how much they would be willing to pay to have someone take over all the paperwork they must complete, 17 percent said nothing

²² Sullivan Letter

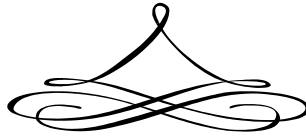
and 5 percent indicated less than \$10 per hour . Still, it is better to neither pay someone to handle paperwork nor to put in this type of sweat equity. That situation would occur if the demands for records were not made in the first place.

Paperwork, therefore, becomes particularly burdensome for those who do not have the resources to hire someone to do the paperwork for them. Among that group are people just starting businesses, those who could use the greatest asset they have, themselves, for higher purposes than completing and maintaining forms.

Simple, easy-to-understand requirements, and fewer of them, are what is key. Agencies that are currently reluctant to fulfill their paperwork reduction requirements must be made to do so. Their hesitation bleeds small businesses dry by diverting precious resources, both in the form of manpower and cash, away from doing their business to working for the federal government. Given the importance of small business job creation to economic health, it is never more important to address this issue than now.

NFIB appreciates the opportunity to comment on the possibility for reducing the paperwork burdens faced by small businesses. Clearly, paperwork represents a costly burden in terms of money spent on reporting, the time taken to fill out forms, and the overall drain on manpower in the process. It is our hope that some significant steps can be taken to reduce this burden, and that EPA and other agencies will adopt some of the recommendations suggested by NFIB. We believe that these suggestions address the issue of simplifying the burden, while still maintaining the integrity of information required by statute and regulation.

Thank you once again for the opportunity to testify on this important issue.



NFIB CORE VALUES

We believe deeply that:

Small business is essential to America.

Free enterprise is essential to the start-up and expansion of small business.

Small business is threatened by government intervention.

An informed, educated, concerned and involved public is the ultimate safeguard.

Members determine the public policy positions of the organization.

Our employees, collectively and individually, determine the success of the NFIB's endeavors, and each person has a valued contribution to make.

Honesty, integrity, and respect for human and spiritual values are important in all aspects of life, and are essential to a sustaining work environment.



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